

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSIAH MALCHIEL ISRAEL BEN-ONI,  
Plaintiff,  
v.  
JONATHAN LUKE WOOD, et. al.,  
Defendants.

No. 2:24-cv-02769-DJC-JDP

ORDER DENYING MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
MOTION FOR PRELIMINARY  
INJUNCTION

Pending before the Court is a Motion for Temporary Restraining Order ("TRO") and a Motion for Preliminary Injunction ("PI") filed by *pro se* Plaintiff Joseph Malchiel Israel Ben-Oni on October 8, 2024. (TRO Mot. (ECF No. 3); PI Mot. (ECF No. 2); Compl. (ECF. No. 1.)) For the reasons stated below, the Court DENIES both Motions.

Plaintiff seeks to prohibit Defendants, Jonathan Luke Wood, and Associated Students, Incorporated ("ASI"), from imposing fee increases and proceeding with the construction of an athletic stadium. (TRO Mot. at 3; PI Mot. at 5.) He also seeks to enjoin Defendants from enforcing ASI Operating Rule 200.6. (TRO Mot. at 3; PI Mot. at 5.)

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1       **I. Background**

2           In the TRO Motion and the PI Motion, Plaintiff alleges that his First and  
3 Fourteenth Amendment rights are violated by Defendants' implementation of a \$508  
4 fee increase set to occur in Fall 2025 and a \$96 increase that took place in Fall 2023,  
5 the planned construction of new athletic stadium, and the ongoing enforcement of  
6 ASI Operating Rule 200.6.<sup>1</sup> (TRO Mot. at 5; PI Mot. at 5.) Plaintiff claims the financial  
7 burden of the fees and constructing the stadium will hinder students' access to  
8 educational opportunities, compromise the quality of their academic experience and  
9 suppress student engagement. (TRO Mot. at 4; PI Mot. at 4.) He also argues that ASI  
10 Operating Rule 200.6 disenfranchises marginalized groups on campus by restricting  
11 their ability to sign petitions based on arbitrary eligibility criteria. (TRO Mot. at 2; PI  
12 Mot. at 3.) These arguments are clarified in Plaintiff's Complaint<sup>2</sup>, where he states that  
13 he was unable to sign, or create, a petition of recall for the President and Vice  
14 President of ASI. (Compl. ¶ 5.) These two individuals then participated in a  
15 committee where the fee increases were approved. (*Id.* ¶ 9.) The Complaint also  
16 alleges that the stadium, although stated to come from "dedicated funds for athletics,"  
17 places a burden on students because Defendants have imposed other athletics-  
18 related fees on students. (*Id.* ¶ 36.)

19           Plaintiff makes several claims. First, he argues that the fee increase was  
20 approved through a process depriving students of their rights to democratic  
21 participation in governance. (TRO Mot. at 2; PI Mot. at 3.) Specifically, he alleges that  
22 ASI Operating Rule 200.6 directly chills the ability to participate in petitions, in  
23 violation of the First Amendment. (TRO Mot. at 3, PI Mot. at 3.) He also alleges a  
24 violation of the Fourteenth Amendment Equal Protection Clause because the rule

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25           <sup>1</sup> According to Plaintiff, ASI Operating Rule 200.6 "stipulates that students must have participated in  
26 prior elections to be eligible to sign future petitions." (Compl. ¶ 6.)

27           <sup>2</sup> Plaintiff mentions in the Complaint that there is an "Exhibit A" that includes documented  
28 communications sent to President Wood and other university officials. They do not appear to have  
been attached. However, the documents would not have changed the Courts analysis. (Compl. ¶ 23.)

1 disproportionately impacts certain student groups (TRO Mot. at 3, PI Mot. at 3,) and a  
2 violation of the Due Process Clause because the rule is ambiguous. (TRO Mot. at 3.)  
3 Lastly, Plaintiff argues that Defendants demonstrated deliberate indifference to the  
4 discriminatory impact of ASI Operating Rule 200.6. (PI Mot. at 3.)

5 **II. Legal Standard**

6 The Court will construe the Motions liberally because Plaintiff is proceeding *pro*  
7 *se*. See *Bernhart v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003) ("Courts  
8 have a duty to construe *pro se* pleadings liberally, including *pro se* motions as well as  
9 complaints."). To obtain preliminary injunctive relief, Plaintiff must show (1) likelihood  
10 of success on the merits; (2) likelihood of irreparable harm in the absence of  
11 preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an  
12 injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20  
13 (2008); see *Stuhlbarg Int'l Sales Co. v. John D. Bush & Co.*, 240 F.3d 832, 839 n.7 (9th  
14 Cir. 2001) (noting the standards for a PI and a TRO are "substantially identical").<sup>3</sup>

15 **III. Discussion**

16 **A. Likelihood of Success on the Merits**

17 The first *Winter* factor, likelihood of success on the merits, is considered the  
18 most important where a plaintiff brings a constitutional claim. *Baird v. Bonta*, 81 F.4th  
19 1036, 1041 (9th Cir. 2023). For the reasons below, it does not appear that Plaintiff has  
20 stated a viable constitutional violation. As an initial matter, the Court is not aware of,  
21 nor has Plaintiff provided, any authority suggesting a constitutional right of students to  
22 participate in the approval of university fees such that his claim would be successful.<sup>4</sup>

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24 <sup>3</sup> The Ninth's Circuit's "sliding scale" approach does not apply here because it does not appear that the  
25 balance of hardships tip sharply in Plaintiff's favor. See *Friends of the Wild Swan v. Weber*, 767 F.3d  
936, 942 (9th Cir. 2014) (internal quotation marks and citations omitted).

26 <sup>4</sup> The Supreme Court has held that students may opt-out of mandatory university fees where the  
27 university distributed money in a "viewpoint discriminatory" manner. See *Rosenberger v. Rectors &*  
Visitors of the Univ. of Va., 515 U.S. 819, 828 (2005). However, Plaintiff has not made those allegations  
28 here.

1 Plaintiff's argument that the fee increase is unconstitutional because of ASI Operating  
2 Rule 200.6 also fails for the reasons below.

3                   **i. First Amendment Claim**

4                 Under the First Amendment, as incorporated to the states through the  
5 Fourteenth Amendment, "Congress shall make no law... abridging the freedom of  
6 speech... or the right of people to peacefully assemble." U.S. CONST. Amend. I. The  
7 Supreme Court has long held that the First Amendment applies to state colleges and  
8 universities. *Healy v. James*, 408 U.S. 169, 180 (1972). Plaintiff argues he is likely to  
9 succeed because ASI Operating Rule 200.6 chills his speech by infringing on his  
10 ability to participate in petitions, which is a fundamental aspect of democratic  
11 governance within the state university. (See PI Mot. at 1.)

12                 Although the issue of signing a petition involves expressive conduct, the First  
13 Amendment allows for the implementation of reasonable time, place, and manner  
14 restrictions on speech in a public forum. See *Flores v. Bennett*, 635 F. Supp. 3d 1020,  
15 1031 (E.D. Cal. 2022). Assuming, without determining, that a public forum is involved,  
16 it is unclear from the record whether the rule is improper.<sup>5</sup> From the summary of ASI  
17 Operating Rule 200.6 provided to the Court, it does not appear that the rule is  
18 viewpoint-discriminatory or content-based such that it would be an improper  
19 restriction. Additionally, there is not enough information on the record to determine  
20 whether the eligibility criteria are in fact "arbitrary" or if there is a government interest  
21 being furthered. See *NRA v. City of Los Angeles*, 441 F. Supp. 3d 915, 931 (C.D. Cal.  
22 2019) (using the text of the challenged ordinance to determine whether a First  
23 Amendment claim was likely to succeed on the merits). It also has not been shown  
24 that student voices are in fact silenced by the Rule itself. Therefore, Plaintiff has not  
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27                 <sup>5</sup> In both traditional and designated public fora, "the government may impose reasonable, time, place  
28 and manner restriction on speech, but content-based restrictions must be viewpoint neutral and satisfy  
strict scrutiny review." *Koala v. Kholsa*, F.3d 887, 900 (9th Cir. 2019).

1 established a colorable First Amendment claim, let alone shown a likelihood of  
2 success on the merits.

3                   **ii. Equal Protection Claim**

4                 Under the Equal Protection Clause, the state may not discriminate against  
5 classes of people in an “arbitrary or irrational” way or with the “bare . . . desire to harm  
6 a politically unpopular group.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432,  
7 439 (1985). Plaintiff argues his claim is likely to succeed because ASI Operating Rule  
8 200.6 disproportionately affects transfer, international and undocumented students  
9 leading to unequal treatment in accessing university processes. (TRO Mot. at 3; PI  
10 Mot. at 3.) First, transfer students are not a protected class that would receive  
11 heightened scrutiny. Even for allegations made about alienage, Plaintiff has not  
12 shown a discriminatory intent behind establishing ASI Operating Rule 200.6 such that  
13 a viable Equal Protection Claim could be successful, even under strict scrutiny. See  
14 *Hernandez v. N.Y.*, 500 U.S. 352, 372-373 (1991).

15                   **iii. Due Process Claim**

16                 In the TRO Motion, Plaintiff alleges that ASI Operating Rule 200.6 is ambiguous,  
17 thereby providing inadequate notice to students about their eligibility to engage in  
18 university governance. (TRO Mot. at 3.) However, without the text of the rule, the  
19 Court cannot determine whether there are issues of vagueness. Therefore, this claim  
20 is not likely to succeed on the merits.

21                   **iv. Deliberate Indifference to Constitutional Violations**

22                 In the PI Motion, Plaintiff argues that Defendants displayed deliberate  
23 indifference to the discriminatory impact of ASI Operating Rule 200.6 thereby  
24 perpetuating the harm. (PI Mot. at 3.) Typically, the claim of deliberate indifference  
25 arises in the Eighth Amendment and Fourteenth Amendment context involving the  
26 relationship between prison guards and prisoners. Here, Plaintiff has not shown,  
27 through facts or case law, how his claim is like recognized instances of deliberate  
28 indifference. Furthermore, Plaintiff has not stated any sort of harm, as the

1 discriminatory impact of a rule alone is typically not enough to be a constitutional  
2 violation. See *Vill. of Arlington Height v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266  
3 (1977). Therefore, Plaintiff's claim is not likely to succeed.

4 **B. Likelihood of Irreparable Harm**

5 Plaintiff has also not established a likelihood of irreparable harm in the absence  
6 of preliminary relief.<sup>6</sup> While Plaintiff seeks to enjoin enforcement of ASI Operating  
7 Rule 200.6, the fee increase, and the construction of the stadium (see TRO Mot. at 3; Pl  
8 Mot at 5,) he has not shown that any of these harms are imminent. See *Friends of the*  
9 *Wild Swan*, 767 F.3d at 946. Specifically, Plaintiff has not demonstrated how the Fall  
10 2025 fee increase or the construction of the stadium immediately impacts students'  
11 access to education beyond a potential future economic harm. Nor has he shown that  
12 ASI Operating Rule 200.6 creates an imminent harm. His allegations solely concern  
13 past harm and hypothetical, future injuries that do not suffice. See *Hollywood v. Pub.*  
14 *Storage Inc.*, No. 18-cv-01822-JGB-GJS, 2018 WL 6003557, at \* 2 (C.D. Cal. Oct. 4,  
15 2018) (denying motion for *ex parte* temporary restraining order due to lack of  
16 evidence showing "temporal urgency such that immediate and irreparable harm will  
17 occur if there is any delay in obtaining relief." (citation omitted)).

18 **C. Balance of Hardships and Public Interest**

19 Even if Plaintiff had raised a "serious legal question" such that the Ninth Circuit's  
20 sliding scale approach would be appropriate, the balance of hardships does not "tip  
21 sharply" in Plaintiff's favor. See *Cottrell*, 632 F.3d at 1131. In the absence of this  
22 preliminary relief, it does not appear that the harm to Plaintiff, who has not stated a  
23 claim likely to succeed, would outweigh the hardship to Defendants, who would have  
24 to cease construction plans, potentially change programming as the result of a loss of  
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27 <sup>6</sup> Plaintiff's TRO Motion cites the standard as a "possibility of irreparable harm." (TRO Mot. at 2.) This is  
28 not the correct standard but even under that analysis, Plaintiff's motion still fails. See *Winter*, 555 U.S. at  
20.

1 fees, and alter a university rule. For similar reasons, it does not appear that the public  
2 interest is served by an injunction in this instance.

3 None of this is to say that Plaintiff will be unable to state a cause of action. The  
4 Court only finds that at this early stage Plaintiff has not shown a need for preliminary  
5 relief. Thus, Plaintiff's Motions must be denied as he failed to meet at least one of the  
6 four *Winter* factors. See *Dish Network Corp., v. F.C.C.*, 653 F.3d 771, 776 (9th Cir.  
7 2011) ("To warrant a preliminary injunction [the movant] must demonstrate that it  
8 meets *all four* of the elements of the preliminary injunction test established in *Winter* . . .  
9 ." (emphasis added)).

10           **D. Conclusion**

11           Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for Temporary  
12 Restraining Order (ECF No. 3) and Motion for Preliminary Injunction (ECF No. 2) are  
13 DENIED. This matter is referred to the assigned Magistrate Judge for all further  
14 pretrial proceedings.

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17           IT IS SO ORDERED.

18 Dated: October 11, 2024

  
Hon. Daniel J. Calabretta  
UNITED STATES DISTRICT JUDGE

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